IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA M. PADGETT,	:	**CIVIL ACTION**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE YMCA OF PHILADELPHIA AND VICINITY,	:	
	:	
	:	
Defendant.	:	**NO. 97-6172**

M E M O R A N D U M

Reed, J. **November 25, 1998**

Before the Court is the motion of defendant the YMCA of Philadelphia and Vicinity ("the YMCA") for summary judgment on the gender discrimination claims of plaintiff Lisa M. Padgett (Padgett) (Document No. 13). Also before the Court is the motion of the YMCA for sanctions (Document No. 15). Because I conclude that genuine issues of material fact remain on Padgett's claims under Title VII and the Pennsylvania Human Relations Act ("PHRA"), the motion for summary judgment will be denied. Because I conclude that Padgett has not alleged that she exhausted her administrative remedies under the PHRA, Count II of the complaint will be dismissed without prejudice to the right to file an amended complaint alleging proper exhaustion of administrative remedies in Count II. Because I conclude that counsel for Padgett had a reasonable basis for the claim of discrimination against the YMCA at the time the complaint was filed, the motion for sanctions under Federal Rule of Civil Procedure 11 will be denied.

I. BACKGROUND

The following facts are gleaned from the record and are taken in the light most favorable to Padgett, the non-moving party. Padgett was employed by the YMCA at the Columbia North Branch beginning in the summer of 1995. In March of 1997, she worked as a Head Fitness Coach in the weight room and also helped out as a van driver and at the front desk. (Padgett dep. at 14). This lawsuit revolves around a pool side incident which occurred at the Columbia North Branch of the YMCA on March 18, 1997, and there is great dispute between the parties over the details of this incident. Padgett's version of the facts is as follows: Padgett was working in the fitness room giving orientations to new members when she noticed Jihe Golden, a male and a Youth Sports Aide at the YMCA, push Ramee Williams, a male and the Senior Lifeguard at the YMCA, into the swimming pool. (Padgett dep. at 67). Golden's supervisor at the time was Trisha Odoms, and Padgett took Golden to Odoms' office after the incident. Odoms was not in her office, so Padgett told Golden to wait there until she could find Odoms. (Padgett dep. at 67-68). About fifteen minutes later, Padgett noticed that Golden had returned to the pool area. Jerome Webb, a male and a Head Fitness Coach at the YMCA, grabbed Golden and handed him to Williams. Then Anwar Pashe, a male and Youth Sports Aide II, pushed both Williams and Golden into the pool. (Padgett dep. at 69-72; Williams dep. at 29-32). Golden was upset at being thrown in the pool and started swinging at Williams when he got out of the pool. (Padgett dep. at 72; Williams dep. at 32). Padgett, Pashe, and Webb intervened to break up the fight. (Padgett at 74; Williams dep. at 33). The bottom bracket of Padgett's dental braces was broken during this altercation. (Padgett dep. at 75-76). Then Padgett returned to the fitness room to complete her orientations. (Padgett dep. at 83). Later, Odoms asked Pashe why his pants were

wet, and Pashe explained what happened at the pool. (Odoms at 9-10; Pashe dep. at 16). Pashe claims that he told Odoms that when Webb handed Golden to Williams, Padgett said "Throw his ass in the pool." (Pashe dep at 17). Odoms also questioned Padgett about the pool incident. (Odoms dep at 18-19; Padgett dep at 83). Padgett told Odoms what happened at the pool, including that Pashe pushed Golden and Williams into the pool, that she was hit in the mouth, and that Webb handed Golden to Williams. (Padgett dep. 85; Declaration of Padgett ¶ 5).

When Padgett returned to work on March 19, 1997, she received a memo from Francine Bell, the Executive Director of the Columbia North Branch, informing her that she had been terminated. (Padgett dep. at 92-94). Padgett claims that Bell cannot remember exactly what Golden, Pashe, and Webb told her about Padgett's involvement. (Bell at 33-34). Bell did not talk to Padgett about the pool incident before she decided to terminate her. (Padgett dep. at 92-95). Padgett and Williams, who was also terminated, met with Bell that day and explained their versions of what happened during the pool incident. (Declaration of Padgett ¶¶ 5 and 6; Padgett dep. at 94-99; Williams dep. at 11-12). Bell said that she would not change her mind, and that Golden did not need to lose his job because he had a child on the way. (Padgett dep. at 96, 138; Williams dep. at 44-45).

The YMCA's version of the pool incident is as follows: During the altercation between Williams and Golden at the pool, Padgett stood by laughing and incited Williams by saying "throw his ass into the pool." (Odoms dep. at 15). Odoms testified that when she confronted Padgett about the incident later that day, Padgett said that "Golden got what he deserved" and that she disclaimed responsibility for the incident because the pool was not her department. (Odoms dep. at 19-20). Odoms testified that she related the accounts of the pool side incident of

Pashe, Williams, and Padgett to Bell. (Odoms dep. at 29). Bell claims that Padgett was terminated because she encouraged Williams and Golden to engage in potentially dangerous horseplay and because she did not accept responsibility for diffusing the altercation. (Bell Aff. ¶¶ 4-5, 10).

Webb and Pashe were not terminated nor disciplined for their involvement in the pool incident. (Bell dep. at 40). Padgett alleges that Williams and Golden, despite being terminated on the same day as Padgett for their involvement in the pool incident, were back working at the YMCA shortly after March 18, 1997. (Statement of Williams; Williams dep. at 13-15, 26).

After Padgett's termination, at least part of Padgett's job responsibilities were covered by Webb. (Bell dep. at 15). Webb paid Williams $20.00 per day to help him cover his additional job responsibilities. (Williams dep. at 22). While some of Padgett's responsibilities were assumed by Webb after her termination, the YMCA contends that Padgett's position at the YMCA as a Head Fitness Coach was not filled after her termination. (Bell dep. at 50; Bell Aff. ¶ 7). Bell knew Williams was working in the fitness room as a volunteer within two weeks of his termination and receiving the benefit of the use of the facilities at the YMCA, but she claims she did not know that Webb was paying him cash to help out. (Bell dep. 21-28; Bell Aff. ¶ 9). Williams testified that Golden was back in his former position at the YMCA after his termination as well. (Williams dep. at 26). The YMCA denies that Williams and Golden returned to the YMCA as paid employees after their termination on March 19, 1997. (Bell dep. at 23, 27; Bell Aff. ¶ 9).

Padgett claims she had never been written-up or disciplined for any offense at the YMCA before the incident on March 18, 1997. (Declaration of Padgett ¶ 4). In comparison, Webb was

involved in at least two serious incidents prior to March 18, 1997 but was never disciplined for his behavior, because of a general understanding at the YMCA that he "could not be fired." (Padgett dep. at 43-55). Padgett contends that Bell preferred to have male employees working in the fitness room. (Padgett dep. at 44).

Bell talked to Winston Gucatan, a former employee of the YMCA at the Columbia North Branch, early in the day on March 18, 1997, before the pool incident, about the possibility of his working in the fitness room at the YMCA in a position similar to Padgett's. (Declaration of Gucatan ¶¶ 7-8). Gucatan told her that morning that he was interested in the job. (Declaration of Gucatan ¶ 8).

Margo Grady, a female former employee of the YMCA at the Columbia North Branch, applied to work in the fitness room as a fitness instructor between October 1995 and December 2, 1996. She was never given the position and was told that Bell claimed that there were inadequate funds or that it was not a good time to hire a new instructor. (Declaration of Grady ¶ 5). Bell, however, approved the placement of two men to work in the fitness room during this period. (Declaration of Grady ¶ 5).

II. STANDARD FOR SUMMARY JUDGMENT

Rule 56(c) of the Federal Rules of Civil Procedure provides that "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law" then a motion for summary judgment may be granted.

The moving party has the initial burden of illustrating for the court the absence of a

genuine issue of material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Adickes v. S.H. Kress & Co., 398 U.S. 144, 159-161 (1970). The movant can satisfy this burden by "pointing out to the district court that there is an absence of evidence to support the nonmoving party's case;" the movant is not required to produce affidavits or other evidence to establish that there are no genuine issues of material fact. Celotex, 477 U.S. at 323-25.

Once the moving party has made a proper motion for summary judgment, the burden switches to the nonmoving party. Under Rule 56(e),

> [w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

The court is to take all of the evidence of the nonmoving party as true and to draw all reasonable inferences in his favor in determining if there is a genuine issue of material fact. See Adickes, 398 U.S. at 158-59. In order to establish that an issue is genuine, the nonmoving party must proffer evidence such that a reasonable jury could return a verdict in her favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986). A proper motion for summary judgment will not be defeated by merely colorable or insignificantly probative evidence. See id. at 249-50.

III. ANALYSIS

Padgett's complaint contains gender discrimination claims under Title VII in Count I and under the PHRA in Count II. Courts have uniformly interpreted the PHRA consistent with Title VII. See Clark v. Commonwealth of Pennsylvania, 885 F. Supp. 694, 714 (E.D. Pa. 1995);

Violanti v. Emery Worldwide A-CF Co., 847 F. Supp. 1251, 1257 (M.D. Pa. 1994). Thus, I will analyze Padgett's claims only under Title VII in sections A and B below; however, my analysis and conclusions are equally applicable to the claims of Padgett under both Title VII and the PHRA.

A. Prima Facie Case for Gender Discrimination

The YMCA argues that Padgett has not produced evidence to support a prima facie claim of disparate treatment sex discrimination. To establish a claim for disparate treatment gender discrimination under Title VII, a plaintiff must show that: (1) she is a member of a protected class; (2) she was qualified for the position; (3) she was discharged from or denied the position; and (4) that non-members of the protected class were treated more favorably or that after her termination, she was replaced by a man or that her duties were given to a man. See McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); Quaratino v. Tiffany & Co., 71 F.3d 58, 64-65 (2d Cir. 1995). To support a finding that other employees were treated more favorably, a plaintiff must present evidence such that a jury could reasonably infer that her discharge was the result of discrimination. See Phillips v. Dalton, 1997 WL 24846, *3 (E.D. Pa.)(noting that "plaintiff must show that [s]he was terminated 'under circumstances which give rise to an inference of unlawful discrimination'")(quoting Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253 (1981)), aff'd, 151 F.3d 1026 (3d Cir. 1998).

There is no dispute that Padgett has evidence sufficient to avoid summary judgment on the first three elements of her prima facie case. The YMCA argues that she has no evidence that she was treated differently than men or that her duties were assumed by a man.

The parties are in great dispute over what happened around the pool on March 18, 1997, what information Bell relied on in her decision to terminate Padgett, whether Golden and Williams were permitted to return to the YMCA in some capacity as employees after their termination, to what extent Padgett's duties were assumed by Webb, and whether Bell preferred men over women as fitness instructors in the weight room; thus, I conclude that genuine issues of material fact remain regarding the pool incident that resulted in Padgett's termination. Padgett's evidence, taken in the light most favorable to her, shows that she was the only female fitness instructor in the weight room, that Bell was interested in hiring Gucatan, a male, as a fitness instructor in the weight room at the time that she fired Padgett, that Grady, a female, had been unsuccessful in being placed as a instructor in the weight room, that Webb and Pashe were not terminated or disciplined for behavior similar to or worse than Padgett's behavior during the pool incident, and that Williams and Golden both returned to the YMCA in some capacity immediately after their termination. Thus, I conclude that Padgett has produced evidence sufficient that a jury could reasonably infer that she her termination was the result of gender discrimination, and the YMCA is not entitled to summary judgment on this ground.

B. Pretext

The YMCA contends that even if Padgett can make out a prima facie case, she does not have sufficient evidence to show that the YMCA's proffered legitimate business reason for her termination, Padgett's involvement in the pool incident, is pretextual. Once a plaintiff has established a prima facie case of disparate treatment, the burden of production shifts to the defendant to show a legitimate, nondiscriminatory reason for the adverse consequence to the

employee. See Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994). Once a defendant has established a legitimate business reason, the plaintiff must show that this proffered reason is a pretext for discrimination. To survive a motion for summary judgment, a plaintiff need not come forward with additional evidence of discrimination beyond the prima facie case, but she must produce evidence, direct or circumstantial, such that a jury can reasonably infer from the inconsistencies, weaknesses, or implausibilities in the employer's reasons that they are not worthy of belief, or that a discriminatory reason was more likely than not a motivating or determinative cause in the decision. Id. at 764-65. A plaintiff does not have to show that discrimination was the sole reason, but rather a determinative factor in the decision. Id. at 764. The Court of Appeals for the Third Circuit has indicated that such a showing can be accomplished by demonstrating that the employer in the past had subjected the plaintiff to unlawful discriminatory treatment, that "the employer treated other, similarly situated persons not of her protected class more favorably, or that the employer has discriminated against other members of her protected class or other protected categories of persons." Id. at 765.

I conclude that Padgett had produced evidence such that a jury could reasonably infer that the defendants proffered reasons for their termination of Padgett are not worthy of credence based on Padgett's evidence that Webb and Pashe were not terminated for their involvement in the pool incident, which included handing Golden to Williams and pushing Golden and Williams into the pool, based on Padgett's evidence that Bell was interested in replacing Padgett with Gucatan, and based on Padgett's evidence that Webb had not been disciplined in the past for altercations he had with patrons of the YMCA. Thus, I conclude that the YMCA is not entitled to summary judgment on Padgett's claims of gender discrimination.

C. Exhaustion of Administrative Remedies under the PHRA

The YMCA contends that Count II of the complaint, claiming discrimination under the PHRA, should be dismissed because Padgett failed to exhaust her administrative remedies. The YMCA claims that Padgett did not wait until the Pennsylvania Human Relations Commission ("PHRC") resolved or dismissed her complaint or until one year had elapsed since the date of its filing.

The PHRA provides that the PHRC shall have exclusive jurisdiction of an administrative claim for one year after its filing, unless the PHRC resolves the claim before the one year has elapsed. See 43 P.S. § 962(c)(1). The legislature intended that the PHRC have exclusive jurisdiction of claims under the PHRA for one year in order to investigate the charges and possibly conciliate the dispute. See McBride v. Bell of Pennsylvania, 1989 WL 71545, *2 (E.D. Pa.) (citing 1974 Pa.Legis.J. 6396-98).

Padgett filed a charge with the EEOC on April 28, 1997 (Def's Mem. Exs. G and H). On May 23, 1997, the EEOC transmitted a copy of the charge to the PHRC under their work-sharing agreement. (Def's Mem. Ex. H). On July 22, 1997, the EEOC issued a notice of right to sue to Padgett. (Def.'s Mem. Ex. I). Padgett filed her complaint in this Court on October 2, 1997. The YMCA argues that as of October 2, 1997, the claim had not been investigated by the PHRC, the PHRC had not closed its file, nor had one year expired since the date that the charge was initially filed with the PHRC.

Padgett argues that the procedures of the PHRC were not invoked by Padgett because she filed her charge with the Equal Employment Opportunity Commission ("EEOC"), not the PHRC.

However, a plaintiff must exhaust all administrative remedies to present a cognizable claim under the PHRA. See Clay v. Advanced Computer Applications, Inc., 559 A.2d 917, 919 (Pa. 1989). I conclude that Padgett did not exhaust her remedies under the PHRA before filing suit in this Court, as the PHRC had not acted upon her compliant and one year had not elapsed by October 2, 1997, the date Padgett filed her complaint in this Court. See Parsons v. City of Philadelphia Coordinating Office of Drug and Alcohol Abuse Programs, 833 F. Supp. 1108, 1114 (E.D. Pa. 1993) (noting that a right to sue letter from the EEOC only demonstrates that a plaintiff has exhausted her administrative remedies regarding Title VII claims); Price v. Philadelphia Electric Company, 790 F. Supp. 97, 99 (E.D. Pa. 1992) (noting that the fact that the plaintiff had filed a claim with the PHRC did not constitute an exhaustion of her remedies); Esmonde v. TV Guide Magazine, Inc., 1992 WL 70409, *10 n.5 (E.D. Pa.) ("The mere filing of a claim with an administrative agency does not constitute exhaustion of administrative remedies.")

During the pendency of this litigation, however, the one year required for PHRA exhaustion has elapsed. Courts facing this situation have generally allowed plaintiff leave to amend the complaint to allege proper exhaustion under the PHRA. See Price, 790 F. Supp. at 99; Esmonde, 1992 WL 70409 at 10 n.6; McBride, 1989 WL 71545 at *3. Thus, because I found that Padgett has established a genuine issue of material fact as to her claim under the PHRA and an amendment of her claim would not be futile, Padgett's claim under the PHRA in Count II will be dismissed without prejudice to the right to amend Count II to properly allege exhaustion of her administrative remedies.

D. Punitive Damages

Finally, the YMCA contends that Padgett's request for punitive damages should be dismissed because punitive damages may not be available under the PHRA and alternatively because Padgett does not allege or provide evidence that she was subjected to the kind of outrageous conduct necessary to support a finding of punitive damages. The YMCA argues that punitive damages are not recoverable under the PHRA in light of Hoy v. Angelone, 691 A.2d 476 (Pa. Super. Ct. 1997), vacating an award of punitive damages and indicating that punitive damages are not recoverable under the PHRA. Although the Pennsylvania Supreme Court has not yet addressed this issue, the district courts in the Third Circuit which have examined this issue have found that punitive damages are recoverable under the PHRA, including cases that were decided after the decision in Hoy. See, e.g., Sarko v. Penn-Del Directory Co., 968 F. Supp. 1026, 1037 (E.D. Pa. 1997) (predicting that the Supreme Court of Pennsylvania would permit an award of punitive damages under the PHRA despite the decision in Hoy); Gould v. Lawyers Title Insurance Corp., 1997 WL 241146 (E.D. Pa.) (same). I find that the reasoning of my fellow judges is both persuasive and accurate and therefore, as I did in Donohue v. Klinghoffer, No. 96-8114, 1998 WL 525804, (E.D.Pa.), I concur with their conclusion that punitive damages are available under the PHRA.

However, Padgett has not produced any evidence that would support a finding that the YMCA acted with malice or reckless indifference toward Padgett, which is required to support an award of punitive damages under Title VII or the PHRA. See 42 U.S.C. § 1981a(a)(1) and (b)(1) (providing that a plaintiff may recover punitive damages in a Title VII claim against an employer if the plaintiff demonstrates that the employer "engaged in a discriminatory practice or

discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual"); Rush v. Scott Specialty Gases, Inc., 930 F.Supp. 194, 199-200 (E.D. Pa. 1996), rev'd on other grounds, 113 F.3d 476 (3d. Cir. 1997) (noting as to a PHRA claim that "[p]unitive damages are available when the defendant's conduct is 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be intolerable in a civilized community'" and that a plaintiff must show that "defendant acted with a bad motive or a reckless indifference to the interests of others to win a punitive award") (quoting Clay v. Advanced Computer Applications, Inc., 536 A.2d 1375, 1384 (Pa. Super. Ct. 1988), rev'd on other grounds, 559 A.2d 917 (Pa. 1989)); Griffiths v. CIGNA Corporation, 857 F.Supp. 399, 417 (E.D. Pa. 1994) (denying a motion to set aside a jury's award of punitive damages in a PHRA case because plaintiff presented sufficient evidence to the jury that "defendant engaged in outrageous conduct that displayed a reckless indifference to the interests of others"). Thus, I conclude that Padgett has not established that a genuine issue of material fact remains on the issue of punitive damages, and the YMCA is entitled to summary judgment on that claim.

E. Motion for Sanctions

The YMCA argues that the Court should impose sanctions under Rule 11 because if Padgett's counsel had conducted a reasonable inquiry prior to filing suit, he would have discovered that "there was no factual information to support the averment that Jihe Golden or Ramee Williams were not fired" and that "there was no evidentiary support to support the averment that the defendant fired plaintiff because of plaintiff's gender." (Def. Motion ¶¶ 5 and 6). The YMCA points to ¶ 11 and ¶ 13 of the complaint, in which Padgett alleges that "[n]either

Jihe [Golden] nor Ramee [Williams] were fired, and Ramee was reassigned as a fitness supervisor to replace the plaintiff" and "[d]efendant did not discipline or fire the two male employees who were engaged in the aforesaid altercation." Padgett argues in response to the motion for sanctions that she has evidence that Golden and Williams were immediately rehired after their terminations, and thus, their termination was a sham. Padgett also has produced evidence that Pashe and Webb were neither disciplined or terminated for their involvement in the pool incident.

Federal Rule of Civil Procedure contains two grounds for sanctions. The first ground is the frivolous clause, which considers whether the party or attorney made a reasonable inquiry into the facts, and whether the party or attorney made a reasonable inquiry into the law. See Ninni v. Caldwell, 1993 WL 323590, * 2 (E.D. Pa.) (citing Brown v. Federation of State Medical Boards of the United States, 830 F.2d 1429, 1435 (7th Cir. 1987)). The current rule holds attorneys to an objective standard of what was reasonable under the circumstances at the time the pleading was submitted. See Gaiardo v. Ethyl Corp., 835 F.2d 479, 482 (3d Cir. 1987); Fed. R. Civ. P. 11 advisory committee notes to the 1993 Amendments.

Because I find that Padgett has produced evidence to establish a genuine issue of material fact as to whether Golden and Williams were permitted to return to the YMCA in some capacity as employees after their termination and as to whether Pashe and Well were disciplined for their involvement in the pool incident, see Section III.A., supra, I conclude that a reasonable factual basis for Padgett's claims existed at the time the complaint was filed, and indeed, exists at this stage of the litigation. Therefore, I conclude that the YMCA has not demonstrated that Padgett's counsel violated Rule 11 or that sanctions should be imposed against counsel for Padgett.

IV. CONCLUSION

Based on the foregoing reasons, the motions of the YMCA will be denied. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LISA M. PADGETT,	:	**CIVIL ACTION**
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE YMCA OF PHILADELPHIA AND VICINITY,	:	
	:	
Defendant.	:	**NO. 97-6172**

O R D E R

AND NOW, this 25th day of November, 1998, upon consideration of the motion of defendant the YMCA of Philadelphia and Vicinity ("the YMCA") for summary judgment (Document No. 13), the response of plaintiff Lisa M. Padgett ("Padgett") (Document No. 20), the reply of the defendant (Document No. 22), the motion of defendant for sanctions (Document No. 15), the response of Padgett (Document No. 21), and the reply of the defendant (Document No. 23), as well as the exhibits, documents, depositions, and accompanying memoranda submitted by the parties, and based on the foregoing Memorandum, it is hereby **ORDERED** that the motion of the YMCA for summary judgment is **GRANTED IN PART AND DENIED IN PART** and the motion of the YMCA for sanctions is **DENIED**. Count II of the complaint is **DISMISSED WITHOUT PREJUDICE** to the right to file an amended complaint in the same form as the original complaint but limited to re-pleading Count II to allege exhaustion of administrative

remedies under the Pennsylvania Human Relations Act ("PHRA") no later than **December 14, 1998.** The claim for punitive damages under Title VII and the PHRA is **DISMISSED**. The motion of the YMCA for summary judgment is **DENIED** on all other grounds.

IT IS FURTHER ORDERED that the parties shall submit a joint report to the Court no later than **January 11, 1999** as to the status of settlement. If the parties need the assistance of the Court in facilitating settlement negotiations, the report should so indicate. By said date, plaintiff shall contact the Deputy Clerk to arrange a date for a final scheduling conference.

LOWELL A. REED, JR., J.